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HOUSE BILL 174

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE MONEY LAUNDERING ACT;
PROVIDING CRIMINAL AND CIVIL PENALTIES; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted
to read:

"NEW MATERIAL SHORT TITLE. -- Sections 1 through 5 of this
act may be cited as the "Money Laundering Act". "

Section 2. A new section of the Criminal Code is enacted
to read:

"NEW MATERIAL DEFINITIONS. -- As used in the Money
Laundering Act:

A. "financial institution" means:

- (1) a bank, credit union, trust company or

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1 thrift institution or an agency or branch thereof;
2 (2) a broker or dealer in securities or
3 commodities;
4 (3) an investment banker;
5 (4) an investment company;
6 (5) an issuer, redeemer or cashier of
7 traveler's checks, checks, money orders or similar instruments;
8 (6) an operator of a credit card system;
9 (7) an insurance company;
10 (8) a dealer in precious metals, stones or
11 jewels;
12 (9) a pawnbroker;
13 (10) a loan or finance company;
14 (11) a travel agency;
15 (12) a licensed sender of money;
16 (13) a telegraph company;
17 (14) a business engaged in vehicle sales,
18 including automobile, airplane and boat sales;
19 (15) a currency exchange;
20 (16) a person involved in real estate closings
21 and settlements; or
22 (17) an agency or authority of a state or local
23 government carrying out a duty or power of a business described
24 in this subsection;

25 B. "financial transaction" means a purchase, sale,

1 loan, pledge, gift, transfer, delivery or other disposition of
2 any monetary instrument or the movement of funds by wire or
3 other means;

4 C. "monetary instrument" means coin or currency of
5 the United States or any other country, traveler's checks,
6 personal checks, bank checks, money orders, investment
7 securities in bearer form or in such other form that title
8 passes upon delivery of the security and negotiable instruments
9 in bearer form or in such other form that title passes upon
10 delivery of the instrument;

11 D. "person" means any individual, corporation,
12 partnership, trust or estate, joint stock company, association,
13 syndicate, joint venture, unincorporated organization or group
14 or other entity;

15 E. "proceeds" means property that is acquired,
16 delivered, produced or realized, whether directly or indirectly,
17 by an act or omission;

18 F. "property" means anything of value, including
19 real, personal, tangible or intangible property; and

20 G. "specified unlawful activity" means any act or
21 omission, including any initiatory, preparatory or completed
22 offense or omission, committed for financial gain that is
23 punishable as a felony under the laws of New Mexico or, if the
24 act occurred outside New Mexico, would be punishable as a felony
25 under the laws of the state in which it occurred and under the

1 laws of New Mexico. "

2 Section 3. A new section of the Criminal Code is enacted
3 to read:

4 " [NEW MATERIAL] REPORTS FILED WITH THE DEPARTMENT OF
5 PUBLIC SAFETY-- CRIMINAL PENALTIES. --

6 A. Any financial institution in New Mexico that is
7 required to file a report regarding a financial transaction
8 under the provisions of the federal Currency and Foreign
9 Transactions Reporting Act and the regulations promulgated
10 pursuant to that act shall file a duplicate of that report with
11 the department of public safety; provided, a financial
12 institution that makes a timely filing with an appropriate
13 federal agency shall be deemed to have satisfied the reporting
14 requirements of this subsection.

15 B. Any person engaged in a trade or business in New
16 Mexico who, in the course of the trade or business, receives
17 more than ten thousand dollars (\$10,000) in cash in one
18 financial transaction or two or more related financial
19 transactions, and is required to file a report under the
20 provisions of 26 U. S. C. Section 6050I and regulations
21 promulgated pursuant to that section, shall file a duplicate of
22 that report with the department of public safety; provided, a
23 person who makes a timely filing with an appropriate federal
24 agency shall be deemed to have satisfied the reporting
25 requirements of this subsection.

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[bracketed material] = delete

1 C. A financial institution, a person engaged in a
2 trade or business or any officer, employee or agent thereof who
3 files or keeps a record pursuant to the provisions of this
4 section or who communicates or discloses information or records
5 pursuant to the provisions of this section shall not be liable
6 to its customer or to any person for any loss or damage caused
7 in whole or in part by the making, filing or governmental use of
8 the report or any information contained in the report.

9 D. Any person who releases information received
10 pursuant to the provisions of this section, except in the proper
11 discharge of his official duties, is guilty of a misdemeanor.

12 E. Any person who knowingly:
13 (1) fails to file a report required pursuant to
14 the provisions of this section is subject to a fine of not more
15 than ten percent of the value of the financial transaction
16 required to be reported or twenty-five thousand dollars
17 (\$25,000), whichever is greater; or

18 (2) provides any false or inaccurate
19 information or knowingly conceals any material fact in
20 connection with the financial transaction that is required in
21 the report pursuant to Subsections A and B of this section is
22 guilty of a fourth degree felony.

23 F. Notwithstanding any other provision of law, any
24 violation of this section constitutes a separate, punishable
25 offense for each transaction or exemption.

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[bracketed material] = delete

1 G. Any report, record, information, analysis or
2 request obtained by the department of public safety or any
3 agency pursuant to the provisions of this section is not a
4 public record as defined in Section 14-3-2 NMSA 1978 and is not
5 subject to disclosure pursuant to the provisions of Section
6 14-2-1 NMSA 1978.

7 H. Any financial institution or person required to
8 file a report pursuant to the provisions of Subsection A or B of
9 this section shall, at the request of the department of public
10 safety, provide the department with access to a copy of the
11 report during the period of time that the financial institution
12 or person is required to maintain the report. "

13 Section 4. A new section of the Criminal Code is enacted
14 to read:

15 " [NEW MATERIAL] PROHIBITED ACTIVITY-- CRIMINAL
16 PENALTIES-- CIVIL PENALTIES. --

17 A. It is unlawful for any person who knows that the
18 property involved in a financial transaction is, or was
19 represented to be, the proceeds of a specified unlawful
20 activity:

21 (1) to conduct, structure, engage in or
22 participate in a financial transaction that involves the
23 property, knowing that the financial transaction is designed in
24 whole or in part to conceal or disguise the nature, location,
25 source, ownership or control of the property or to avoid a

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1 transaction reporting requirement under state or federal law;

2 (2) to conduct, structure, engage in or
3 participate in a financial transaction that involves the
4 property for the purpose of committing or furthering the
5 commission of any other specified unlawful activity;

6 (3) to transport a monetary instrument with the
7 intent to further a specified unlawful activity, knowing that
8 the transport is designed, in whole or in part, to conceal or
9 disguise the nature, location, source, ownership or control of
10 the monetary instrument or to avoid a transaction reporting
11 requirement under state or federal law; or

12 (4) to make the property available to another
13 person by means of a financial transaction or by transporting
14 the property, when he knows that the property is intended for
15 use by the other person to commit or further the commission of a
16 specified unlawful activity.

17 B. A person who violates any provision of Subsection
18 A of this section is guilty of a:

19 (1) second degree felony if the illegal
20 financial transaction involves more than one hundred thousand
21 dollars (\$100,000);

22 (2) third degree felony if the illegal
23 financial transaction involves over ten thousand dollars
24 (\$10,000) but not more than one hundred thousand dollars
25 (\$100,000);

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1 (3) fourth degree felony if the illegal
2 financial transaction involves over one thousand dollars
3 (\$1,000) but not more than ten thousand dollars (\$10,000); or

4 (4) misdemeanor if the illegal financial
5 transaction involves one thousand dollars (\$1,000) or less.

6 C. A person who violates any provision of Subsection
7 A of this section is subject to a civil penalty of three times
8 the value of the monetary instrument involved in the
9 transaction, in addition to any criminal penalty.

10 D. Nothing contained in the Money Laundering Act
11 precludes any civil or criminal remedies provided by the
12 Racketeering Act or the Controlled Substances Act or by any
13 other New Mexico law. Those remedies are in addition to and not
14 in lieu of remedies provided in the Money Laundering Act. "

15 Section 5. A new section of the Criminal Code is enacted
16 to read:

17 " [NEW MATERIAL] ATTORNEY FEES--EXCEPTION. --No provision of
18 the Money Laundering Act shall apply to a financial transaction
19 involving the bona fide fees an attorney accepts for
20 representing a client in a criminal investigation or any
21 proceeding arising from a criminal investigation. "

22 Section 6. Section 30-42-3 NMSA 1978 (being Laws 1980,
23 Chapter 40, Section 3, as amended) is amended to read:

24 "30-42-3. DEFINITIONS. --As used in the Racketeering Act:

25 A. "racketeering" means any act ~~[which]~~ that is

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1 chargeable or indictable under the laws of New Mexico and
2 punishable by imprisonment for more than one year, involving any
3 of the following cited offenses:

4 (1) murder, as provided in Section 30-2-1 NMSA
5 1978;

6 (2) robbery, as provided in Section 30-16-2
7 NMSA 1978;

8 (3) kidnapping, as provided in Section 30-4-1
9 NMSA 1978;

10 (4) forgery, as provided in Section 30-16-10
11 NMSA 1978;

12 (5) larceny, as provided in Section 30-16-1
13 NMSA 1978;

14 (6) fraud, as provided in Section 30-16-6 NMSA
15 1978;

16 (7) embezzlement, as provided in Section
17 30-16-8 NMSA 1978;

18 (8) receiving stolen property, as provided in
19 Section 30-16-11 NMSA 1978;

20 (9) bribery, as provided in Sections 30-24-1
21 through 30-24-3 NMSA 1978;

22 (10) gambling, as provided in Sections 30-19-3,
23 30-19-13 and 30-19-15 NMSA 1978;

24 (11) illegal kickbacks, as provided in Sections
25 30-41-1 and 30-41-2 NMSA 1978;

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1 (12) extortion, as provided in Section 30-16-9
2 NMSA 1978;

3 (13) trafficking in controlled substances, as
4 provided in Section 30-31-20 NMSA 1978;

5 (14) arson and aggravated arson, as provided in
6 Subsection A of Section 30-17-5 and Section 30-17-6 NMSA 1978;

7 (15) promoting prostitution, as provided in
8 Section 30-9-4 NMSA 1978;

9 (16) criminal solicitation, as provided in
10 Section 30-28-3 NMSA 1978;

11 (17) fraudulent securities practices, as
12 provided in the New Mexico Securities Act of 1986;

13 (18) loan sharking, as provided in Sections
14 30-43-1 through 30-43-5 NMSA 1978; ~~and~~

15 (19) distribution of controlled substances or
16 controlled substance analogues as provided for in Sections
17 30-31-21 and 30-31-22 NMSA 1978; and

18 (20) a violation of the Money Laundering Act;

19 B. "person" ~~[includes]~~ means any individual or
20 entity capable of holding a legal or beneficial interest in
21 property;

22 C. "enterprise" means any sole proprietorship,
23 partnership, corporation, business, labor union, association or
24 other legal entity or any group of individuals associated in
25 fact although not a legal entity and includes illicit as well as

1 licit entities; and

2 D. "pattern of racketeering activity" means engaging
3 in at least two incidents of racketeering with the intent of
4 accomplishing any of the prohibited activities set forth in
5 Subsections A through D of Section 30-42-4 NMSA 1978; provided
6 at least one of [~~such~~] the incidents occurred after the
7 effective date of the Racketeering Act and the last [~~of which~~]
8 incident occurred within five years after the commission of a
9 prior incident of racketeering."

10 Section 7. SEVERABILITY.--If any part or application of
11 the Money Laundering Act is held invalid, the remainder or its
12 application to other situations or persons shall not be
13 affected.

14 Section 8. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 1997.

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State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 7, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 174

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 5, line 13, after "report" insert "with the department of public safety".
2. On page 5, lines 16 and 17, strike "twenty-five thousand dollars (\$25,000)" and insert in lieu thereof "five thousand dollars (\$5,000)".
3. On page 5, lines 20 and 21, strike "connection with the

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 174

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financial transaction that is required in the report" and insert
in lieu thereof "a report required".

4. On page 7, line 6, strike "a monetary instrument" and
insert in lieu thereof "the property".

5. On page 8, line 8, strike "monetary instrument" and
insert in lieu thereof "property".,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMI TTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____

Not Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 174

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The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, King, Larranaga, Luna, Rios, Sanchez

Absent: None

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**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 25, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 174, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Max Coll, Chairman

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Buffett, Heaton, Picraux, Salazar, Townsend, Watchman

Absent: None

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[bracketed material] = delete

FORTY-THIRD LEGISLATURE

FIRST SESSION

February 28, 1997

HOUSE FLOOR AMENDMENT number ___1___ to HOUSE BILL 174, as amended

Amendment sponsored by Representative R. David Pederson

1. On page 10, line 18, after "of" insert "the provisions of Section 4 of".

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~~[bracketed material] = delete~~

FORTY-THIRD LEGISLATURE
FIRST SESSION

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2 HB 174

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R. David Pederson

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10 Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

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